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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of — Confirmation No.: 3408

Tomihisa KAMADA et al — Art Unit: 2611

S. N. 09/319,649 — Examiner: H. V. Tran

Filed: June 10, 1999

For: METHOD AND DEVICE FOR OBTAINING AUDIENCE DATA ON TV PROGRAMS

BRIEF ON BEHALF OF APPELLANT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Examiner's final rejection mailed July 30, 2003.

REAL PARTY IN INTEREST

The real party in interest is Access Co., Ltd. & Nippon Telegraph and Telephone Corporation, the assignees of the application.

RELATED APPEALS AND INTERFERENCES

No related appeals or interferences are known to appellant, the appellant's legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-25 are pending in the application, are rejected, and are the claims under appeal. Appellant wishes to prosecute this appeal with respect to claims 1-25. An appendix of claims is included herewith.

This application was originally filed on June 10, 1999, as a PCT National Phase Entry application based from a PCT application filed December 12, 1997, with claims 1-13. During prosecution, a number of claims were added, and the application now has claims 1-25. A final office action was mailed July 16, 2003, and a response after final was filed October 10, 2003, and a supplemental response after final was filed November 1, 2003. This response was again faxed November 19, 2003, at the request of the Examiner. No amendments were made in the response after final. The Examiner issued an advisory action, maintaining the rejections, but noting that amendments after final would not be entered for purposes of appeal. No amendments were made after final. Applicant filed a notice of appeal by fax on January 16, 2004, to which this present appeal brief relates.

STATUS OF AMENDMENTS

No amendment was filed subsequent to final rejection.

SUMMARY OF THE INVENTION

The invention relates to a method and device for obtaining audience data on TV programs. The invention makes use of a

device already present in most households, a TV with internet connecting capability or a computer with television viewing capability. This eliminates the need to provide dedicated hardware devices for audience data collection (page 4, line 26 to page 5, line 7 of applicant's specification). This makes it easy to conduct a nationwide or wide scale audience rating research, as no special equipment is needed to be distributed to households. The use of the Internet allows access via the user's access to the internet for transfer of data, as contrasted with the prior one to one communication between viewer and data collection center (page 5, lines 17-26). A feature of the invention is detecting a channel of TV program being viewed and the time of day when being viewed, by referring to a data table of TV program data (FIG. 4). This defines what programs are planned to be broadcast at a time and channel in an area where the viewer resides. A feature is that the invention will make use of the opportunity of the user (viewer) accessing the Internet and uses that opportunity to exchange the data (that is, to upload viewed program information, for example). (see page 24, line 24 and following, FIG. 12). Thus the invention does not require the system to explicitly access the Internet on its own, instead relying on the user to eventually access the internet, and transferring data at that time.

THE ISSUES

The broad issue presented in this appeal is whether the Examiner's final rejection of claims 1-25 is proper. The issue may be stated more narrowly as:

1. Whether claims 1-3, 5-8 and 10-25 are unpatentable under 35 U.S.C. 103(a) over Herz et al (U.S. Patent 5,758,257) in view of Welsh (U.S. Patent 5,375,951) and further in view of Williams et al (U.S. Patent 5,977,964) .

2. Whether claims 4 and 9 are unpatentable under 35 U.S.C. 103(a) over Herz et al (U.S. Patent 5,758,257) in view of Welsh (U.S. Patent 5,375,951) and further in view of Rothmuller (U.S. Patent 5,635,989).

GROUPING OF CLAIMS

Claims 1, 2, 5-7, 10, 11 and 14-16 stand or fall together but do not necessarily stand or fall with claims 4 and 9 nor with claims 3, 8, 12, 13 and 17-25, because the other two groups of claims add separate patentable details (using the opportunity of a user accessing the internet to transfer data and ignoring continuous viewing time periods of less than a predetermined time), so even if claims 1, 2, 5-7, 10, 11 and 14-16 were to fall, the claims 3, 4, 8, 9, 12, 13 and 17-25 could be considered to stand given the additional concepts therein.

Claims 3, 8, 12, 13 and 17-25 stand or fall together but not necessarily with claims 1, 2, 5-7, 10, 11 and 14-16 nor with

claims 4 and 9, because claims 3, 8, 12, 13 and 17-25 include the concept worded different ways, of using the opportunity of a user accessing the internet (or www browser software operation) to access the internet to make data exchanges. This concept is a separate patentability issue that defines further over the other claims.

Claims 4 and 9 stand or fall together but do not necessarily stand or fall with claims 1-3, 5-8 and 10-25.

Claims 4 and 9 stand or fall together but not necessarily with claims 1-3, 5-8 and 10-25 in that claims 4 and 7 add further details as to the concept of ignoring a continuously viewed time of a program when the time is shorter than a predetermined amount, and this adds separate patentability grounds to these claims.

ARGUMENT

1. Claims 1-3, 5-8 and 10-25 are patentable over Herz et al (US 5758257) in view of Welsh (US 5374951) and Williams et al (US 5977964).

Herz is related to a system for attempting to predict customer preferences and pre-scheduling a number of video programs to that particular customer based on a customer preference profile. The document discusses that a fixed number of video transmission channels are available and schedules a number of preferred (in accordance with the profile) videos based

on that profile until the number of channels is zero. The column 4 section that the Examiner refers to in making the rejection is discussing the user profile and mentions that the profile may be different for times of days and days of weeks (that is, the customer's preference for type of video program may be different at different times and days). Note also that the profile has nothing to do with individual particular videos, but instead relates to characteristics for classifying videos such as under directors (that is, names of directors), actors (particular actors' names), degree of sex or violence. Then, separate and unrelated to what is taking place in the customer profile, each video has a profile associated with the video that indicates the decree of content in that video for the various characteristics.

Then, the system of Herz attempts to make a calculated determination of the most likely videos that the particular customer would choose to view and provides those videos over the available numbers of channels, up to the number of channels available.

A simple way to describe what is happening is that the Herz system ranks available videos according to a customer's perceived preference profile and makes the top "n" videos available (where "n" is the number of transmission channels that are available).

Herz "monitors" which programs were accessed or watched by a user. There is no indication within Herz of whether the act of

simply selecting a program for as short a period of, for example, just one minute, qualifies as "watching" it. Herz says the return data collection can be either wired or wireless. Herz does not teach that the information having at least one of a start view time, an end view time, and a difference between the start and end view time is transmitted. Independent claims 1, 6, 11, 17, 22 and 24 recite this concept, as do the remaining claims (which depend thereon), and it is respectfully submitted that this concept provides patentability to applicants' claims. The addition of the other documents does not result in the invention.

Applicants respectfully disagree with the Examiner's assertion that Herz takes the opportunity of making use of the Internet to perform any functions as needed by a user. This is proposed by applicants, not Herz. Herz doesn't show or suggest this. Applicants' claim 3, recites "by making use of opportunities of the viewer's accessing the Internet". Claims 8, 12, 13, 17, 21, 22, 24 and their respective dependent claims all include this concept. It is respectfully submitted that in light of this, these various claims and their dependent claims are allowable. Applicants' invention advantageously employs opportunities that arise from a viewer accessing the Internet to transfer data, rather than making a separate access to the Internet.

Also, the Examiner's comment on page 3 of the final office action regarding claim 3 confused appellants' attorney a bit. Here the Examiner is stating that limitations from the specification are not read into the claims. However, the specific limitation in question does appear in the claims (for example, in claim 3) stating "by making use of opportunities of the viewer's accessing the Internet". The Examiner's comment is one that would be made in the case of arguing a limitation that is not in the claim. Since the limitation in question is in the claim in question, applicants respectfully request reconsideration of this particular point.

The Examiner points to Herz col. 51, lines 5-8 and Williams column 8 line 51 as showing use of the user's accessing the Internet. These locations in these referenced documents do not teach what is claimed. Herz is stating that the invention's concepts might also be applied to use of the internet, attempting to predictively pre-schedule and pre-feed information that a user is likely to want to obtain from the internet. It does **not** teach or suggest the concept of claim 3 (or claims 8, 12, 13, 17, 21, 22, 24 and their respective dependent claims) of making use of opportunities of the viewer's accessing the internet in order to obtain TV program table data or to transfer viewer ID and program information. Similarly, Williams is stating that the database can be updated periodically by phone/network, but it does not

state that the opportunity of the user accessing the internet is advantageously employed to accomplish this.

The Examiner asserts in the office action that, at column 4 line 59 through column 5 line 4, Herz shows obtaining viewed channel information and obtaining a program ID of a viewed program. Such a concept is not taught in this portion of Herz. However, at column 6, lines 56-65, it is indicated that the customer's set top terminal is polled to retrieve stored data indicating which video was watched. This information is then used to update the customer profile in an attempt to better predict what videos the customer might wish to watch for future preselection of videos to feed to the customer. It is not employed to do what applicants claim.

The Examiner notes on page 4 of the final Office Action that "Hertz do not clearly disclose ... 'Identifying a program ID of currently viewed program from the TV program table data by comparing the detected channel and current time with the channel and time information of the TV program table data' ...". Applicants respectfully believe that Hertz at al. fail to teach or suggest at least the feature of Applicants' invention that a TV program ID of a program being viewed by a viewer is detected by detecting a currently viewed channel and current time and by comparing the channel and time with those in a TV program table.

The Examiner further relies upon Welsh for the rejection, stating on page 5 that "Welsh teaches... Identifying a program ID of currently viewed program from the TV program table data by comparing the detected channel and current time with the channel and time information of the TV program table data (Welsh household system must compare the detected channel and current time with the channel and time information of the TV program table data... Col. 14, lines 32-40) . . .". However, this understanding of the Welsh document by the Examiner is respectfully submitted to be incorrect because the program ID in Welsh is encoded in the received television signal as character strings and a decoder (18) simply detects it, as clearly described in column 5, lines 47-59 of the Welsh reference. Therefore, it is respectfully urged by appellants that this ground of rejection should not be maintained. The addition of Williams at al. does not cure the defect of Hertz et al. and Welsh not teaching or suggesting the claimed invention.

The Examiner disagrees with applicants' arguments that Welsh simply detects the encoded signal. The Examiner argues that Welsh "produces" the character strings encoded in the TV signal. Applicants respectfully traverse the rejection and do not believe the Examiner's interpretation of Welsh is warranted. The term "detect" in this context of applicants' claims is different from the context of Welsh. The use of the term "produce" in Welsh

here is more appropriately "reproduce" which might be considered a synonym for "detect" in the concept of receiving signals, but that is not what appellants' claims relate to or claim. It is respectfully submitted that Welsh is not teaching or suggesting what applicants claim.

Further, another consideration is that Herz is not at all concerned with television broadcast in the conventional sense of signals broadcast via radio frequency propagation. Instead Herz is for application in a video signal transmission system where the transmissions are to be scheduled based on viewer's past viewing habits. It is not related to applicants' system of obtaining audience data on broadcast programs.

It is respectfully submitted that combining the documents as proposed by the Examiner does not teach or suggest applicant's claims.

2. Claims 4 and 9 are patentable over Herz et al (U.S. Patent 5,758,257) in view of Welsh (U.S. Patent 5,375,951) and further in view of Rothmuller (U.S. Patent 5,635,989).

The arguments submitted above apply to this particular rejection also. Rothmuller adds nothing that would teach the particular details of the claims 1 and 6, from which claims 4 and 9 depend, when combined with the other documents. Thus the claims are allowable as depending from allowable base claims.

CONCLUSION

In summary, since applicants respectfully submit that the Examiner's interpretation of what Herz discusses at column 4 line 59 and following is not warranted (the Examiner says Herz teaches viewed channel information here, but Herz teaches general statistical characteristics of a profile here which might vary by time of day or day of week, not channel information and time), applicants respectfully submit that the claims in general are neither taught nor suggested by the proposed documents, whether considered alone or whether combined. Therefore claims 1-25 are submitted to be allowable.

Further applicants respectfully assert that the concept of using the opportunity of the user accessing the internet is neither taught nor suggested by the documents and combinations proposed by the Examiner. This concept appears in claims 3, 8, 12 and 17-25. Therefore, claims 3, 8, 12 and 17-25 are submitted to be allowable for additional reasons.

In view of these points above, it is respectfully submitted that the rejections under 35 U.S.C. §103(a) should not be sustained.

In view of the foregoing, it is submitted that claims 1-25 of this application are patentable, and it is accordingly requested that the Examiner's final rejection be reversed and that allowance of this application be directed.

Respectfully submitted,

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In re Application of Confirmation No.: 3408

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For: METHOD AND DEVICE FOR OBTAINING AUDIENCE DATA ON TV PROGRAMS

APPENDIX OF CLAIMS

1. (previously amended) A method for obtaining audience data on TV programs, in an audience data obtaining device which uses a computer, the method comprising the steps of:

obtaining, from outside, TV program table data for an area where a viewer resides, said TV program table data including channel information and time information for each of TV programs planned to be broadcast in that area;

detecting a channel that is being viewed by the viewer;

detecting times at which a viewing of the channel is started and ended;

identifying a program ID of a currently viewed program from said TV program table data by comparing said detected channel and a current time with the channel and time information of said TV program table data;

obtaining audience data which include at least the program ID and viewed time information of the viewed program based on

said TV program table data and results of the detecting of times, said viewed time information including at least one of (1) a view start time of each viewed program, (2) a view end time of each viewed program, and (3) a difference between the view start time and the view end time; and

transferring, via the Internet to a collection center, the obtained audience data along with ID data of the viewer.

2. (previously amended) A method for obtaining audience data on TV programs according to claim 1, wherein said step of obtaining TV program table data includes automatically and regularly obtaining said TV program table data by use of the Internet or a broadcasting medium, and said step of transferring includes automatically and regularly performing the transmission to the collection center.

3. (previously amended) A method for obtaining audience data on TV programs according to claim 1, wherein said step of obtaining TV program table data includes automatically obtaining said TV program table data, and said step of transferring includes automatically performing the transmission to the collection center, both by making use of opportunities of the viewer's accessing the Internet.

4. (previously amended) A method for obtaining audience data on TV programs according to claim 1, wherein said step of obtaining audience data includes ignoring a continuously viewed

time of a program when the viewed time is shorter than a predetermined time.

5. (previously amended) A method for obtaining audience data on TV programs according to claim 1, wherein said step of transferring includes transmitting said data to be transferred as an HTML text document or an electronic mail.

6. (previously amended) A device for obtaining audience data on TV programs, comprising:

a program table data obtaining means far obtaining, from outside, TV program table data for an area where a viewer resides, said TV program table data including channel information and time information for each of TV programs planned to be broadcast in that area;

a first detector for detecting a channel that is being viewed by the viewer;

a second detector for detecting times at which a viewing of the channel is started and ended;

a program identification means for identifying a program ID of a currently viewed program from said TV program table data by comparing said detected channel and a current time with the channel and time information of said TV program table data;

an audience data obtaining means for obtaining audience data which include at least the program ID and viewed time information of the viewed program based on results of the detecting of times

and said TV program table data, said viewed time information including at least one of (1) a view start time of each viewed program, (2) a view end time of each viewed program, and (3) a difference between the view start time and the view end time; and

a transfer means for transferring, via the Internet to a collection center, the obtained program ID and the viewed time information along with ID data of the viewer.

7. (original) A device for obtaining audience data on TV programs according to claim 6, wherein said program table data obtaining means automatically and regularly acquires said TV program table data by making use of the Internet or a broadcasting medium.

8. (previously amended) A device for obtaining audience data on TV programs according to claim 6, wherein said program table data obtaining means acquires said TV program table data by making use of opportunities of the viewer's accessing the Internet.

9. (original) A device for obtaining audience data on TV programs according to claim 6, wherein said program identification means ignores a continuously viewed time of a program when the viewed time is shorter than a predetermined time.

10. (original) A device for obtaining audience data on TV programs according to claim 6, wherein said transfer means transmits said data to be transferred, as an HTML text document or an electronic mail.

11. (previously amended) A recording medium storing a computer, readable program for carrying out the steps of:

obtaining, from outside, TV program table data for an area where a viewer resides, said TV program table data including channel information and time information for each of TV programs planned to be broadcast in that area;

detecting a channel that is being viewed by the viewer;

detecting times at which a viewing of the channel is started and ended;

identifying a program ID of a currently viewed program from said TV program table data by comparing said detected channel and a current tune with the channel and time information of said TV program table data;

obtaining audience data which include at least the program ID and viewed time information of the viewed program based on said TV program table data and results of the detecting of times, said viewed time information including at least one of (1) a view start time of each viewed program, (2) a view end time of each viewed program, and (3) a difference between the view start time and the view end time; and

transferring, via the Internet to a collection center, the obtained audience data along with ID data of the viewer.

12. (previously amended) A method for obtaining audience data on TV programs according to claim 2, wherein said first step includes automatically obtaining said TV program table data, and said forth step includes automatically performing the transmission to the collection center, both by making use of opportunities of the viewer's accessing the Internet.

13. (previously amended) A device for obtaining audience data on TV programs according to claim 7, wherein said program table data obtaining means acquires said TV program table data by making use of opportunities of the viewer's accessing the Internet.

14. (previously presented) A method for obtaining audience data on TV programs according to claim 1, wherein said TV program table is a matrix data table which defines program ID's of programs specified by channels in one axis of the matrix and time zones in another axis.

15. (previously presented) A device according to claim 6, wherein said TV program table is a matrix data table which defines program ID's of programs specified by channels in one axis of the matrix and time zones in another axis.

16. (previously presented) A recording medium according to claim 11, wherein said TV program table is a matrix data table which defines program ID's of programs specified by channels in one axis of the matrix and time zones in another axis.

17. (previously presented) A method for obtaining audience data on TV programs, in an audience data obtaining device which uses a computer, the method comprising the steps of:

obtaining, from outside, TV program table data for an area where a viewer resides, said TV program table data including channel information and time information for each of TV programs planned to be broadcast in that area;

detecting a channel that is being viewed by the viewer;

detecting times at which a viewing of the channel is started and ended;

identifying a program ID of a currently viewed program from said TV program table data by comparing said detected channel and a current time with the channel and time information of said TV program table data;

obtaining audience data which include at least the program ID and viewed time information of the viewed program based on said TV program table data and results of the detecting of times, said viewed time information including at least one of (1) a view start time of each viewed program, (2) a view end time of each viewed program, and (3) a difference between the view start time and the view end time; and

transferring, via the Internet to a collection center, the obtained audience data along with ID data of the viewer by making use of opportunities of the viewer's accessing the Internet.

18. (previously presented) A method for obtaining audience data on TV programs according to claim 17, wherein said step of transferring is performed during an operation of a WWW browsing software.

19. (previously presented) A method far obtaining audience data on TV programs according to claim 18, wherein unsent audience data is transmitted upon request for terminating the operation of the WWW browsing software.

20. (previously presented) A method for obtaining audience data on TV programs according to claim 17, further comprising a step of connecting to the Internet before the step of transferring.

21. (previously presented) A method for obtaining audience data on TV programs according to claim 17, wherein said step of obtaining TV program table data is achieved by making use of opportunities of the viewer's accessing the Internet.

22. (previously presented) A device for obtaining audience data on TV programs, comprising:

a program table data obtaining means for obtaining, from outside, TV program table data for an area where a viewer

resides, said TV program table data including channel information and time information for each of TV programs planned to be broadcast in that area;

a first detector for detecting a channel that is being viewed by the viewer;

a second detector for detecting times at which a viewing of the channel is started and ended;

a program identification means for identifying a program ID of a currently viewed program from said TV program table data by comparing said detected channel and a current time with the channel and time information of said TV program table data;

an audience data obtaining means for obtaining audience data which include at least the program ID and viewed time information of the viewed program based on results of the detecting of times and said TV program table data, said viewed time information including at least one of (1) a view start time of each viewed program, (2) a view end time of each viewed program, and (3) a difference between the view start time and the view end time; and

a transfer means for transferring, via the Internet to a collection center, the obtained program ID and the viewed time information along with ID data of the viewer by making use of opportunities of the viewer's accessing the Internet.

23. (previously presented) A device for obtaining audience data of TV programs according to claim 22, wherein said step of

transferring is performed during an operation of a WWW browsing software.

24. (previously presented) A recording medium storing a computer readable program for carrying out the steps of:

obtaining, from outside, TV program table data for an area where a viewer resides, said TV program table data including channel information and time information for each of TV programs planned to be broadcast in that area;

detecting a channel that is being viewed by the viewer;

detecting times at which a viewing of the channel is started and ended;

identifying a program ID of a currently viewed program from said TV program table data by comparing said detected channel and a current time with the channel and time information of said TV program table data;

obtaining audience data which include at least the program ID and viewed time information of the viewed program based on said TV program table data and results of the detecting of times, said viewed time information including at least one of (1) a view start time of each viewed program, (2) a view end time of each viewed program, and (3) a difference between the view start time and the view end time; and

transferring, via the Internet to a collection center, the obtained audience data along with ID data of the viewer by making use of opportunities of the viewer's accessing the Internet.

25. (previously presented) A recording medium according to claim 24, wherein said step of transferring is performed during an operation of a WWW browsing software.